

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**  
Alexandria Division

In re:

GABY R. ARANIBAR,

Debtor.

Case No. 08-11294-RGM  
(Chapter 7)

**MEMORANDUM OPINION**

THIS CASE is before the court on two proposed reaffirmation agreements by and between the debtor and Virginia Commerce Bank (Docket Entries 22 & 23). The debtors are represented by counsel who, pursuant to 11 U.S.C. §524(c)(3), may have properly completed Part C of each reaffirmation agreement, by checking the certification that in counsel's opinion the debtors are able to make the required payment in light of the presumption of undue hardship. There is doubt as to whether Part C was properly completed because Part D of each proposed reaffirmation agreement, which determines whether the presumption of undue hardship arises, is not completed.

The opinion under 11 U.S.C. §524(k)(5)(B) is applicable only if a presumption of undue hardship arises. The presumption of undue hardship arises as provided in §524(m)(1) which states:

[I]t shall be presumed that such agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of such agreement required under §524(k)(6)(A) is less than the scheduled payments on the reaffirmed debt.

11 U.S.C. §524(m)(1). Section 524(k)(6)(A) requires completion of Part D. Because the debtor did not complete Part D in either proposed reaffirmation agreement, the court cannot determine whether there is a presumption of undue hardship and, thus, whether counsel should have given his opinion that notwithstanding an undue hardship, the debtor is able to make the required payments.

Since §524(k)(5)(B) was not complied with, §524(c)(2) which incorporates §524(k) was not complied with either. Because all of the subsections of §524(c) were not satisfied, the reaffirmation agreement is not effective.

Alexandria, Virginia  
June 25, 2008

/s/ Robert G. Mayer  
Robert G. Mayer  
United States Bankruptcy Judge

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